

### § 3.318

in the Southwest Asia theater of operations during the Persian Gulf War and the onset of the illness; or

(3) If there is affirmative evidence that the illness is the result of the veteran's own willful misconduct or the abuse of alcohol or drugs.

(d) For purposes of this section:

(1) The term *Persian Gulf veteran* means a veteran who served on active military, naval, or air service in the Southwest Asia theater of operations during the Persian Gulf War.

(2) The Southwest Asia theater of operations includes Iraq, Kuwait, Saudi Arabia, the neutral zone between Iraq and Saudi Arabia, Bahrain, Qatar, the United Arab Emirates, Oman, the Gulf of Aden, the Gulf of Oman, the Persian Gulf, the Arabian Sea, the Red Sea, and the airspace above these locations.

(Authority: 38 U.S.C. 1117)

[60 FR 6665, Feb. 3, 1995, as amended at 62 FR 23139, Apr. 29, 1997; 66 FR 56615, Nov. 9, 2001; 68 FR 34541, June 10, 2003; 71 FR 75672, Dec. 18, 2006]

### § 3.318 Presumptive service connection for amyotrophic lateral sclerosis.

(a) Except as provided in paragraph (b) of this section, the development of amyotrophic lateral sclerosis manifested at any time after discharge or release from active military, naval, or air service is sufficient to establish service connection for that disease.

(b) Service connection will not be established under this section:

(1) If there is affirmative evidence that amyotrophic lateral sclerosis was not incurred during or aggravated by active military, naval, or air service;

(2) If there is affirmative evidence that amyotrophic lateral sclerosis is due to the veteran's own willful misconduct; or

(3) If the veteran did not have active, continuous service of 90 days or more.

(Authority: 38 U.S.C. 501(a)(1))

[73 FR 54693, Sept. 23, 2008]

### §§ 3.319–3.320 [Reserved]

#### CROSS REFERENCES: <sup>1</sup>

<sup>1</sup> 39 FR 5315, Feb. 12, 1974.

### 38 CFR Ch. I (7–1–09 Edition)

Permanent and total disability ratings for pension purposes. See § 3.342. Special monthly dependency and indemnity compensation, death compensation and pension ratings. See § 3.351. Determination of permanent need for regular aid and attendance and “permanently bedridden.” See § 3.352. Conditions which determine permanent incapacity for self-support. See § 3.356.

### § 3.321 General rating considerations.

(a) *Use of rating schedule.* The 1945 Schedule for Rating Disabilities will be used for evaluating the degree of disabilities in claims for disability compensation, disability and death pension, and in eligibility determinations. The provisions contained in the rating schedule will represent as far as can practicably be determined, the average impairment in earning capacity in civil occupations resulting from disability.

(Authority: 38 U.S.C. 1155)

(b) *Exceptional cases—(1) Compensation.* Ratings shall be based as far as practicable, upon the average impairments of earning capacity with the additional proviso that the Secretary shall from time to time readjust this schedule of ratings in accordance with experience. To accord justice, therefore, to the exceptional case where the schedular evaluations are found to be inadequate, the Under Secretary for Benefits or the Director, Compensation and Pension Service, upon field station submission, is authorized to approve on the basis of the criteria set forth in this paragraph an extra-schedular evaluation commensurate with the average earning capacity impairment due exclusively to the service-connected disability or disabilities. The governing norm in these exceptional cases is: A finding that the case presents such an exceptional or unusual disability picture with such related factors as marked interference with employment or frequent periods of hospitalization as to render impractical the application of the regular schedular standards.

(2) *Pension.* Where the evidence of record establishes that an applicant for pension who is basically eligible fails to meet the disability requirements based on the percentage standards of the rating schedule but is found to be unemployable by reason of his or her